The Privacy Act of 1974 Overview

Statutory/Regulatory Authority

- Statutory authority:
  - The Privacy Act of 1974 is codified at 5 U.S.C. § 552a

  DoD Regulatory authority:

  DoD Directive 5400.11

  DoD Regulation 5400.11-R

  OSD Administrative Instruction 81

  DoD Privacy Program Rules, 32 C.F.R. Part 310.

Purpose of the Privacy Act

- To safeguard information pertaining to individuals contained in federal records
- To provide individuals access and amendment rights to their records
- To balance an individual's privacy interests with the Government's need to maintain information about them
- To provide judicial remedies for wrongful disclosures

Definitions

- Individual: A living person who is a citizen of the U.S. or an alien lawfully admitted for permanent residence ("LPR").
  - Not included in definition are non-U.S. citizens who are not LPRs, organizations and businesses.
  - Deceased individuals are not protected by the Privacy Act

Definitions

- Personal identifier: Information about an individual that identifies, relates to or is unique to, or describes him or her
- Record: Any item, collection, or grouping of information, whatever the storage media, about an individual that is maintained by a DoD component

Definitions

- Routine Use: Release of information outside the agency for a purpose compatible with the purpose for which the information was collected.
- System of records: A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol or other identifier assigned to the individual.

Information Protected Under the Privacy Act

Examples of information that is protected under the Privacy Act are:

- Social Security Numbers
- Home addresses & telephone numbers
- Complete date of birth
- Personal medical information
- Financial information
- Religion, national origin

Access Rights Under the Privacy Act

- Individuals have the right to:
  - Request copies of records that the government is maintaining about them
  - Designate a person to have access to information about them
  - Seek amendment of any factual inaccuracies found in their records
  - Understand how long records will be maintained by the government
  - File an appeal from the denial of access

Systems of Records Notices

- With the passage of the Privacy Act, agencies were required to identify “systems of records” that allowed for the collection of information that was retrieved by a person’s name or personal identifier.
- Federal agencies must published all Systems of Records Notices in the *Federal Register*

Purpose of Privacy Act Systems of Records Notices

- To inform the general public of what data is being collected, the purpose of the collection, and the authority for doing so.
- To set the rules that agencies must follow in collecting and maintaining data about individuals.
- To permit the collection of information about individuals.

Disclosure Under the Privacy Act

- No agency shall disclose any record which is contained in a system of records by any means of communication to any person or another agency without a written request or prior written consent of the individual to whom the record pertains, unless the release has been established by a routine use.
  - Disclosure includes any means of communication--oral, written, electronic

Privacy Act Statements

- When an agency solicits information from an individual to maintain in a system of records, it must inform the individual in writing of:
  - The statute or executive order that authorizes the agency to solicit the information;
  - The principal purposes for which the information is intended to be used;
  - The routine uses which may be made of the information as published in the system of records notice in the *Federal Register;*
  - Whether the collection of the information is mandatory or voluntary; and the effects, if any, on the individual for not providing the information

Social Security Number Solicitation

- The Privacy Act makes it unlawful to deny any benefit, right, or privilege provided by law because an individual refuses to disclose his or her Social Security Number (“SSN”).
- Any time that a SSN is requested, regardless of whether it is to be kept in a system of records, a Privacy Act Statement must be provided.

Safeguarding Privacy Act Information

- Privacy Act information must always be treated as “FOR OFFICIAL USE ONLY” information and must be marked accordingly.
  - This applies to conventional & electronic records (e-mail & faxes), which must contain the cautionary marking “FOUO” before the beginning of text containing Privacy Act information
  - Privacy Act information must be ENCRYPTED if sent via e-mail message or kept on “mobile” equipment (memory stick, pda).

Safeguarding Privacy Act Information

- Privacy Act records must be stored in filing cabinets or other containers so as to prevent unauthorized access.
- During non-duty hours, cabinets do not have to be locked if the filing area is secured or internal building security is in place.
- During duty hours when Privacy Act records are in use, caution must be exercised to ensure that the information is not perused or examined by unauthorized persons.

Safeguarding Privacy Act Information

- Three levels of safeguards are required:
  - Administrative
  - Physical
  - Technical

  Who is responsible for establishing safeguards:

  Information Technology System Designers

  Privacy Act System Managers

  Local Privacy Act Officials

  YOU are responsible for seeing that safeguards are applied!

Privacy Act Criminal Penalties

- Criminal penalties:

Any agency officer or employee who willfully makes a disclosure of a record knowing it to be in violation of the Privacy Act or maintains a system of records without having published the requisite systems notice shall be guilty of a misdemeanor and fined up to $5000. See 5 U.S.C. §§ 552s(i)(1) & (2)

Any person who knowingly and willfully requests or obtains a record of another individual from an agency under false pretenses may be convicted of a misdemeanor and fined not more than $5000. See 5 U.S.C. § 552s(i)(3).

Your Role & Responsibilities

- Do not collect personal information without proper authorization
- Do not maintain illegal files; do not maintain or release inaccurate information
- Do not distribute or release personal information to individuals who do not have a need for access
- Do not maintain records longer than permitted
- Do not destroy records before record disposal requirements are met

Your Role & Responsibilities

- Do not share information with anyone unless:
  - The recipient is listed in Section (b) of the Privacy Act, or
  - The subject of the record has given you written permission to disclose the information

  Ensure that you do not place unauthorized documents in a records system

  Ensure that you properly mark all documents that contain privacy information “FOR OFFICIAL USE ONLY-Privacy Act of 1974” or “FOR OFFICIAL USE ONLY-Privacy Act Data”

Your Role & Responsibilities

- Ensure that all message traffic, faxes, and e-mails that contain personal information are properly marked and ENCRYPTED (e-mails)
- Password protect personal data placed on shared drives, the Internet or the Intranet
- Monitor your actions: If I do this, will I increase the risk of unauthorized access?
- Think PRIVACY before you seek to establish new data collections

OSD/JS Privacy Act Contacts

- Defense Privacy Office (“DPO”)
  - DPO website: http://www.defenselink.mil/privacy/
  - OSD/JS Privacy Coordinators:
    - Karen Finnegan and Dave Henshall
      (703) 696-3081 and (703) 696-3243
  - karen.finnegan@whs.mil; dave.henshall@whs.mil